

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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The Connecticut Light and Power Company) D.T.E. 99-

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THE CONNECTICUT LIGHT AND POWER COMPANY'S PETITION
FOR FINDINGS UNDER SECTION 32(C) OF THE PUBLIC UTILITY
HOLDING COMPANY ACT OF 1935 (ELIGIBLE FACILITIES)

The Connecticut Light and Power Company ("CL&P") hereby petitions the Department of Telecommunications and Energy ("Department") to issue findings pursuant to Section 32(c) (15 U.S.C.A. sec. 79z-5a) of the Public Utility Holding Company Act of 1935 ("PUHCA") in connection with the sale by CL&P of 2,235 megawatts ("MW") of its fossil-fueled generating assets to NRG Energy, Inc. ("NRG") of Minneapolis, Minnesota, and the sale of 1,058 MW of its hydroelectric generating assets to Northeast Generation Company ("NGC") of Berlin, Connecticut. The assets to be sold to NRG and the assets to be sold to NGC are herein collectively referred to as the "Assets". Together, the Assets constitute substantially all of CL&P's nonnuclear generating assets.

As explained more fully in the enumerated paragraphs below, it is critical for the Assets to be afforded "eligible facility" status under PUHCA. In order for the Assets to qualify for eligible facility status, the public utility commission in each state in which an electric company affiliate of CL&P operates must issue certain findings, described below. Western Massachusetts Electric Company ("WMECO") is the electric company affiliate of CL&P operating in Massachusetts. Therefore, CL&P is seeking the required findings by the Department.

1. CL&P is a wholly owned operating company subsidiary of Northeast Utilities ("NU"), a registered holding company under PUHCA. CL&P is an electric public service company providing retail service in Connecticut and is subject to the jurisdiction of the Connecticut Department of Public Utility Control ("DPUC") pursuant to Title 16 of the Connecticut General Statutes. CL&P is divesting the Assets pursuant to Section 6(b) of Public Act 98-28, An Act Concerning Electric Restructuring ("P. A. 98-28," codified as Conn. Gen. Stat. Section 16-244f). CL&P has no customers in Massachusetts.
2. CL&P is an affiliate of WMECO, an electric company subject to the jurisdiction of the Department. WMECO provides retail electric service to approximately 200,000 customers in western Massachusetts.
3. In accordance with P.A. 98-28, CL&P is proceeding expeditiously with the divestiture of substantially all of its nonnuclear generating facilities. Accordingly, CL&P, as a result of an auction held by the DPUC, has signed agreements to sell 2,235 MW of fossil-fueled generation in Connecticut to NRG and to sell 1,058 MW of hydroelectric generation to NGC. CL&P, NRG and NGC intend to close the sale of the Assets as soon as they have obtained all necessary regulatory approvals. The closings are expected to take place by November 15, 1999.
4. The auction that led to the agreements between CL&P and NRG and between CL&P and NGC is the same auction that led to the agreement between WMECO and NGC to sell NGC 271 MW of WMECO's hydroelectric generating facilities. WMECO has filed a separate petition with the Department for approval of that sale and for the findings necessary under PUHCA for the WMECO assets being sold to NGC. That proceeding has been docketed as D.T.E. 99-74.
5. As a condition to closing CL&P's sales to NRG and NGC, NRG and NGC or the subsidiary operating the Assets must obtain the determination of the Federal Regulatory Energy Commission ("FERC") that they are "exempt wholesale generators" ("EWG") under Section 32 of PUHCA. EWG status is critical to NRG and NGC (as it would have been to any potential purchaser) because it allows the purchaser to own and operate the facility without regulation under PUHCA.
6. FERC's EWG determination must be based, in part, on a determination that the purchased facilities are "eligible facilities."⁽¹⁾

If such facilities have been in the seller's retail rate base, the determination that they are "eligible facilities" depends on specific findings by:

- (1) the state regulatory commission having jurisdiction over such facilities, and
- (2) every state commission having jurisdiction over the retail rates and charges of an affiliate, if the seller is part of a registered holding company, as defined by PUHCA.

As stated above, CL&P is part of a registered holding company. Therefore, in order to obtain the required "eligible facilities" finding from FERC, specific findings must be obtained from the DPUC, the Department (because CL&P's affiliate WMECO operates in Massachusetts), and the New Hampshire Public Utilities Commission ("NHPUC") (because CL&P's affiliate Public Service of New Hampshire operates in New Hampshire).

7. The specific findings required of the Department, the DPUC and the NHPUC are that allowing the Assets to be "eligible facilities"

(a) will benefit consumers;

(b) is in the public interest; and

(c) does not violate State law.⁽²⁾

8. Allowing the Assets to be eligible facilities will benefit consumers, is in the public interest and does not violate State law. First, consumers will benefit because additional generating capacity will be available for sale in the competitive market. Because the competitive market is expected to function more efficiently than the rate-regulated system of generation, consumers should benefit through lower prices. This benefit has been recognized by the Department in the context of electric utility restructuring in Massachusetts. Second, designation of the facilities as eligible facilities is in the public interest because it supports the Commonwealth's stated goals of eliminating the vertical integration of the electric utility industry and of making electricity generation a competitive function. Third, such designation does not violate State law. On the contrary, the sale of the Assets is completely consistent with the Massachusetts restructuring act, Chapter 164 of the Acts of 1997, which mandates divestiture of generating assets.

9. The findings sought by CL&P from the Department are identical to those sought and obtained by WMECO from the DPUC and NHPUC in connection with WMECO's prior asset sale (approved by the Department in D.T.E. 99-29 on June 30, 1999). When WMECO agreed to sell those assets, it was also required to obtain specific findings from the DPUC and NHPUC that the designation as "eligible facilities" benefits consumers, is in the public interest and does not violate state law. The DPUC made these findings in Docket Nos. 99-04-16 and 99-05-16 (June 23, 1999) (appended as Attachment A) and the NHPUC made these findings in Docket No. DE99-074 (July 7, 1999).

10. In order to fulfill the requirements of Section 32 of PUHCA, CL&P hereby respectfully requests that the Department make a specific determination that allowing the generating assets to be "eligible facilities" as defined in Section 32(a)(2) (15 U.S.C.A. sec. 79z-5a(a)(2)) will (1) benefit consumers; (2) is in the public interest; and (3) does not violate state law.

11. CL&P further requests that the Department grant any other approvals and make any other findings as may be necessary or appropriate.

12. In support of these findings, CL&P refers the Department to Attachment B, CL&P's application for approval of the asset divestiture, filed with the DPUC on July 19, 1999, together with supporting schedules and attachments. The DPUC has designated CL&P's application as 98-10-08RE02. CL&P will file with the Department the decision of the DPUC on its application as soon as it is rendered.

13. CL&P requests that all communications concerning this Petition be directed to the signatories below.

Respectfully submitted,

**THE CONNECTICUT LIGHT AND
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1. ¹

Section 32(a)(2) of PUHCA defines "eligible facility" as

a facility, wherever located, which is either (A) used for the generation of electric energy exclusively for sale at wholesale, or (B) used for the generation of electric energy and leased to one or more public utility companies, Provided, That any such lease shall be treated as a sale of electric energy at wholesale for purposes of sections 824d and 834c of Title 16.

2. ² In pertinent part, Section 32(c) of PUHCA (15 U.S.C.A. sec. 79z-5a(c)) provides as follows:

(c) State Consent for Existing Rate-Based Facilities. If a rate or charge for, or in connection with, the construction of a facility, or for electric energy produced by a facility (other than any portion of a rate or charge which represents recovery of the cost of a wholesale rate or charge) was in effect under the laws of any State as of October 24, 1992, in order for the facility to be considered an eligible facility, every State commission having jurisdiction over any such rate or charge must make a specific determination that allowing such facility to be an eligible facility (1) will benefit customers, (2) is in the public interest, and (3) does not violate State law; *Provided*, That in the case of such a rate or charge which is a rate or charge of an affiliate of a registered holding company:

(A) such determination with respect to the facility in question shall be required from every State commission having jurisdiction over the retail rates and charges of the affiliates of such registered holding company;....